E COPY

Office-Supreme Court, U.S.
FILED
MAY 25 1959
JAMES R. BROWNING, Clerk

No. 874

OCTOBER TERM, 1958

IN THE

Supreme Court of the United States

BENNIE L. WHITFIELD, ET AL., *Petitioners*

VERSUS

UNITED STEELWORKERS OF AMERICA, LOCAL NO. 2708, ET AL., *Respondents*

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals Fifth Circuit

BUTLER, BINION, RICE & COOK
GEORGE RICE
JAMES DENNIS SMULLEN
3200 Gulf Building
Houston 2, Texas
Attorneys for Respondents, Armco Steel Corporation and Sheffield Steel Corporation

ALPHA LAW BRIEF CO., 402 M & M BLDG., HOUSTON 2

SUBJECT INDEX

	PAGE
STATEMENT	1
ARGUMENT	3
CONCLUSION	5

LIST OF AUTHORITIES

CASES

Ford Motor Co. v. Huffman, 345 U.S. 330, 73 S.Ct. 681, 97 L.Ed. 1048 4

Graham v. Brotherhood of Locomotive Firemen & Enginemen, 70 S.Ct. 15, 338 U.S. 232, 94 L.Ed. 22 3

Rolax v. Atlantic Coast Line R. Co., 186 F.2d 473 3

Steele v. Louisville & Nashville R.R. Co., 323 U.S. 192, 89 L.Ed. 173 ..... 3, 4

Tunstall v. Brotherhood of Railroad Trainmen, 323 U.S. 21, 65 S.Ct. 235, 89 L.Ed. 187 3

No. 874

OCTOBER TERM, 1958

IN THE

Supreme Court of the United States

BENNIE L. WHITFIELD, ET AL., *Petitioners*

VERSUS

UNITED STEELWORKERS OF AMERICA, LOCAL NO. 2708, ET AL., *Respondents*

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals Fifth Circuit

Statement

Respondents ARMCO STEEL CORPORATION and SHEFFIELD STEEL CORPORATION respectfully submit that Petitioners' Statement is not "a concise statement of the case containing the facts material to the consideration of the questions presented." For the most part, the

Statement is not factual at all. It is mainly (i) a recital of the allegations in Petitioners' Complaint, (ii) a recounting of what the "evidence tended to show", (iii) matters which Petitioners "argued", and (iv) matters about which Petitioners "objected."

The decision in this case rests upon 54 Findings of Fact which are embodied in the Trial Court's Opinion (156 F.Supp. 430) and appear in the Record at pp. 668-690. Petitioners' complaint is that the Agreement under attack requires that any one who enters a skilled Line of Progression enter at the bottom. The Trial Court found that (i) this requirement has always applied, (ii) it applies whether the man who seeks to enter is White or Negro, (iii) the training, experience and skill which a man obtains in the bottom job is a prudent and good faith prerequisite to his advancing to the next higher job in the Line, and (iv) the requirement that a man fill each job in order to qualify for the next higher job is motivated by good faith and sound judgment and is not motivated by bad faith or discrimination of any sort (R. 677-683).

These Fact Findings are completely supported by the evidence.

The decision of the Court of Appeals was likewise based upon the Fact Findings of the District Court and no Finding of Fact was disturbed.

Certain implications of Petitioners' Statement are also contrary to the following Fact Findings:

> "13. Continuously during the period from February 1943, to date, negro employees in responsible positions and offices in the Union have participated in the negotiation of the bargaining contracts, progression charts

grievances and similar proceedings and have joined in the execution of the contracts and writings entered into between the Company and the Union.

"14. Prior to November, 1954, the Negroes affirmatively approved and agreed to the promotion and progression practices and other practices in effect in connection with the filling of the jobs in the bargaining unit at the Sheffield Plant. During all of this period, the Negroes signified complete agreement to all such practices and did not object, protest or evidence any dissatisfaction."

It was incumbent upon Petitioners, in order to preserve any challenge which they had to the Trial Court's Fact Findings, to show the Court of Appeals the error of these Findings. Although certain Fact Findings were assigned as error by Petitioners in the Court of Appeals, Petitioners did not brief these assignments (See Appellants' Brief in Court of Appeals).

Argument

Petitioners assign two reasons for the grant of the Writ:

1. The conflict of the Opinion of the Court of Appeals with that in *Rolax v. Atlantic Coast R. Co.*, 186 F.2d 473;
2. The conflict of the Opinion of the Court of Appeals with the holdings of this Court in *Steele v. Louisville & Nashville R.R. Co.*, 323 U.S. 192, 89 L.Ed. 173; *Tunstall v. Brotherhood of Railroad Trainmen*, 323 U.S. 21, 65 S.Ct. 235, 89 L.Ed. 187; and *Graham v. Brotherhood of Locomotive Firemen and Enginemen*, 338 U.S. 232, 70 S.Ct. 15, 94 L.Ed. 22.

Petitioners' asserted conflicts do not exist. The Court of Appeals decided the instant case under the rule of the *Steele* case, and cited that case in support of its holding.

The Court of Appeals relied upon and quoted from *Ford Motor Co. v. Huffman*, 345 U.S. 330, 73 S.Ct. 681, 97 L.Ed. 1048, an even more recent decision of this Court.

Petitioners have no basis to contend that the lower Courts misconstrued or misapplied the now settled doctrine of the *Steele* case and the similar holdings of the other decisions cited. The Court of Appeals has not announced any new doctrine; it has not strained or tugged against the established doctrine of the *Steele* case; it has simply ruled that under the uncontroverted facts of this case, no taint of discrimination is present.

In reality, Petitioners seek to have this Court examine not legal principles but fact findings that are so uncontrovertibly established by the evidence that they did not even merit attack by Petitioners in their Brief to the Court of Appeals. In essence, the lower courts in the instant case have found from the evidence that honest, fair, prudent and sound business principles require that an employee, White or Negro, be required to start at the bottom and ascend the ladder of a skilled Line of Progression and that he not try to begin at the top or midway on the plea that a period of being present at a plant in a common labor or semi-skilled job is somehow a substitute for the essential training and experience of the skilled jobs in the lower range of the Line. Petitioners are, in effect, contending that a young man, White or Negro, should not have to start as a freshman, but if he is as old as a sophomore, he should be permitted to skip the freshman class on the

theory that time spent is somehow the equivalent of learning and acquired skill.

This case presents no arguable issue of race discrimination. Petitioners regrettably seek to envelop it in an invidious aura and thereby obscure the absence of any factual basis of complaint. To illustrate, Petitioners' phrasing of the "Questions Presented" is adroitly abstract. The generality of the Questions leaves unexpressed any specific, particular error in the decisions of the District Court and the Court of Appeals.

Conclusion

There being no valid ground for the grant of Writ of Certiorari, it should be denied.

Respectfully submitted,

GEORGE RIGE
JAMES DENNIS SMULLEN
Attorneys for Respondents,
Armco Steel Corporation and
Sheffield Steel Corporation

Certificate of Service

THIS IS TO CERTIFY that service of the within Brief has been made by mailing a copy thereof with first-class postage prepaid, addressed to each of the following counsel of record at the post office addresses shown:

Roberson L. King
810 Prairie Avenue
Houston 2, Texas
Counsel for Bennie L. Whitfield, et al., Petitioners

Chris Dixie
Scanlan Building
Houston 2, Texas
Counsel for Respondent United Steelworkers of America, Local No. 2708

James Dennis Smullen

JAMES DENNIS SMULLEN